STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALRON MAYNARD RINGO,

Defendant-Appellant.

UNPUBLISHED
January 13, 1998

No. 195561
Recorder's Court
LC No. 95-001687

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Following his jury conviction for delivery of cocaine over 50 but less than 225 grams, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), defendant appeals by right, contending that the trial court erred in rejecting his entrapment defense and that the trial court further erred in refusing his timely request that the jury be instructed on possession of cocaine under 25 grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), as a lesser offense of the original charge. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In the transaction which became the basis for the delivery prosecution, defendant functioned as facilitator or middleman. Previously unknown to the undercover police officers involved in the investigation and ultimate purchase of more than 138 grams of cocaine, defendant came to the attention of these officers when "nominated" by a paid undercover informant, who was compensated on a per capita basis for each drug dealer brought to the attention of the police. Defendant contends that this Court has disapproved such use of paid informants, *.e.g*, *People v LaClear*, 196 Mich App 537; 494 NW2d 11 (1992), overlooking the fact that *LaClear* was reversed by the Michigan Supreme Court, 442 Mich 867; 497 NW2d 490 (1993). However defendant became involved, the record reflects that the police did nothing more than present defendant with the opportunity to commit the crime of which he stands convicted. This is not entrapment. *People v Ealy*, 222 Mich App 508, 510; ___ NW2d ___ (1997), and cases there cited. The trial judge therefore did not clearly err in rejecting defendant's entrapment defense.

With respect to possession as a lesser offense of a charge of delivery of controlled substances, this Court has recently reconfirmed the longstanding rule that possession is only a cognate lesser offense rather than a necessarily included lesser offense of delivery. *People v Binder* (*On Remand*), 215 Mich App 30, 35; 544 NW2d 714 (1996), *vacated in part on other gds*, 453 Mich 913; ___ NW2d ___ (1996). On the facts of this case, the possession under 25 grams for which defendant contends would have focused on defendant's receipt of 14 grams of cocaine as payment for his facilitative services in arranging the purchase by the undercover officers of 124 grams of cocaine for themselves from a third party known to defendant. There was no possession by defendant apart from his efforts in procuring the sale of the larger amount; defendant's half-ounce was weighed by the seller in the presence of defendant and the undercover officers contemporaneously with the weighing and packaging of the four ounces delivered to the officers. Accordingly, it would not have been logical to convict defendant only of the cognate lesser offense, and such instruction was therefore properly refused. *People v Jones*, 395 Mich 379, 390; 236 NW2d 461 (1975); *People v Veling*, 443 Mich 23, 36; 504 NW2d 456 (1993).

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly